
Mined Land Reclamation Statutes and Rules

**Division of
Mined Land Reclamation**



**Arizona State Mine Inspector
Douglas K. Martin**

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Title 27

Minerals, Oil, and Gas

Chapter

5. Mined Land Reclamation

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Title 27
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Article 1. Administration

27-901. Definitions

In this chapter, unless the context otherwise requires:

1. “Division” means the division of mined land reclamation in the office of the state mine inspector.
2. “Existing exploration operation” means an exploration operation that is ongoing as of July 1, 1996.
3. “Existing mining unit” means a mining unit, other than a new mining unit, that continued operations after January 1, 1986.
4. “Exploration operation” means activities that create surface disturbances outside a mining facility and that are conducted to determine the presence, location, extent, depth, or grade of minerals, including constructing access roads and drill pads.
5. “Inactive mining unit” means a mining unit that has not been operated after January 1, 1986 and for which there is a current and identifiable owner or operator other than the federal or state government.
6. “Inspector” means the state mine inspector.
7. “Maintenance” means an activity to preserve or repair the function of previously disturbed land, including grading roads, repairing berms or dams and dredging sedimentation basins.
8. “Mineral” means any metalliferous material extracted from the earth, including gold, silver, copper, molybdenum, zinc, and

lead and other materials that are used as feedstocks in producing metalliferous materials.

9. “Mining facility” means property that is owned, operated, or managed by the same person to develop, mine, concentrate, or leach minerals and associated mineral recovery activities but does not include smelting, refining, fabricating, or other metal processing facilities and materials associated with those facilities. Property that is not contiguous but is within the same geographical area and is operated as a single mining complex is considered to be a single mining facility.

10. “Mining unit” means an individual portion of a mining facility that encompasses one or more surface disturbances.

11. “New exploration operation” means an exploration operation that begins after the effective date of the initial rules adopted pursuant to this chapter.

12. “New mining unit” means a mining unit at which surface disturbances begin after the effective date of the initial rules adopted pursuant to this chapter.

13. “Reclamation” means measures that are taken on surface disturbances at exploration operations and mining units to achieve stability and safety consistent with post-mining land use objectives specified in the reclamation plan.

14. “Soil” means topsoil, suitable substrata or other plant growth media that will sustain vegetation.

15. “Stability” means the condition of the land with respect to its erosion potential and ability to withstand seismic activity.

16. “Surface disturbance” means clearing, covering or moving land by means of mechanized earth-moving equipment for mineral exploration, development, and production purposes but does not include surveying, assessment, and location work, seismic work, maintenance and other such activities that create a de minimis disturbance.

27-902. Division of mined land reclamation; coordination of programs and activities

A. The state mine inspector shall establish a division of mined land reclamation and employ staff who have the necessary and appropriate experience in mining and reclaiming mined lands.

B. This chapter does not replace or duplicate provisions of title 49 that regulate exploration and mining operations to protect public health and the environment.

C. The requirements of a reclamation plan under this chapter, a closure plan for the same unit required under title 49, chapter 2, article 3, and other provisions and requirements of title 49 and this title, including financial assurance requirements, shall not be redundant, inconsistent, or contradictory. This chapter does not supersede the closure plan requirements of title 49, chapter 2, article 3.

27-903. Exemption for state lands; agreements for coordination with other governmental agencies and landowners

A. This chapter does not apply to any activity that occurs on state land and that is regulated pursuant to chapter 2, article 3, 4, or 5 of this title.

B. The state mine inspector may enter into agreements pursuant to title 11, chapter 7, article 3 with the state land department, United States bureau of land management, United States forest service, and other agencies that manage public lands and take other appropriate measures to coordinate the review and approval of reclamation plans, including designating a lead agency for reclamation plan review and action. The inspector shall avoid redundant, inconsistent, or contradictory reclamation, inspection, administration, enforcement and financial assurance requirements.

27-904. Rules; contributions

A. Not later than October 1, 1996, the state mine inspector shall adopt rules consistent with this chapter for the reclamation of surface disturbances at exploration operations and mining units and for the administration of this chapter.

B. To accomplish the purposes of this section, the state mine inspector may accept monies for deposit in the state general fund received from any source, including restricted or unrestricted federal funds, gifts and contributions from other governmental agencies, individuals, corporations, or other organizations. The state treasurer shall separately account for monies received pursuant to this subsection that are deposited in the state general fund.

27-905. Certificate of disclosure of violations; remedies; definition

A. The following persons shall file a certificate of disclosure with the division of mined land reclamation as prescribed by this section:

1. A person who is engaged in any activity subject to regulation under this chapter and who has been convicted of a felony involving laws related to mined land reclamation within the five year period immediately preceding execution of the certificate.
2. Any person who is engaged in an activity subject to regulation under this chapter and who is or has been subject in any civil proceeding to an injunction, decree, judgement or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to mined land reclamation.

B. The certificate of disclosure prescribed by this section shall contain the following:

1. Identification of the person, including present full name, all prior names or aliases, full birth name, present house address and all prior addresses for the

immediately preceding five year period, date and place of birth and social security number.

2. The nature and description of each conviction or judicial action, the date and place, the court and public agency involved, and the file or cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of the corporation.

D. Initial certificates shall be delivered to the division within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of the person's fiscal year as reported on the initial certificate.

E. By February 1 of each year, the state mine inspector shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

F. In lieu of the certificate of disclosure prescribed by this section, a corporation may submit to the division copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section 78), commonly known as a "10-K form," within ninety days after filing the annual report. The initial submission shall include 10-K forms for the preceding five years.

G. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file

a certificate of disclosure and who fails to file the certificate is subject to section 27-1022, section 27-1024, subsections B and C and section 27-1025.

H. For purposes of this section, “person” means:

1. A natural person.
2. Any public or private corporation, its officers, directors, trustees, incorporators and persons who control or hold over ten percent of the issued and outstanding common shares or ten percent of any other proprietary, beneficial or membership interest in the corporation.
3. A partnership, including all general partners and limited partners who control a ten percent or more beneficial interest in the partnership.
4. An association or society of persons.
5. A limited liability company including all members who have a ten percent or more interest in the limited liability company.
6. The federal government and any of its departments or agencies.
7. This state and any of its agencies, departments, political subdivisions, counties, towns, or municipal corporations.

Article 2. General Regulatory Provisions

27-921. Surface disturbances created by new exploration operation or mining unit

Beginning April 1, 1997, an owner or operator of a new exploration operation or new mining unit shall not create a surface disturbance of more than five contiguous acres until a reclamation plan and financial assurance mechanism for the exploration operation or mining unit are approved by the state mine inspector or are otherwise authorized by this chapter.

27-922. Surface disturbances created by existing exploration operation or mining unit; extension; continuing operations

A. An owner or operator of an existing exploration operation or existing mining unit with surface disturbances of more than five contiguous acres shall submit a reclamation plan to the state mine inspector by April 1, 1997.

B. An owner or operator may petition the inspector for an extension of time to submit a reclamation plan. The inspector shall grant the extension on a showing of good cause, including the need to coordinate the preparation and submission of a reclamation plan with an aquifer protection permit application under title 49, chapter 3, article 2 or with other permits and approvals required for the exploration operation or mining unit.

C. The owner or operator of an existing exploration operation or mining unit may continue operations, including creating surface disturbances, until the inspector takes final action on the reclamation plan and financial assurance mechanism.

D. The reclamation of surface disturbances created in whole or in part before July 17, 1994, the effective date of this chapter, and the initial rules adopted pursuant to this chapter may present special technical and economic constraints that are not encountered for new surface disturbances. The inspector shall consider the nature and extent of the existing surface disturbances, relevant site-specific circumstances and the technical and economic practicability of reclaiming such surface disturbances. The inspector shall not require the removal or relocation of existing mining units to satisfy the reclamation requirements of this chapter.

27-923. Creating surface disturbances of five acres or less

A. Nothing in this chapter shall prevent an owner or operator of an exploration operation or mining unit from creating a surface disturbance of five contiguous acres or less.

B. From and after December 31, 1996, the state mine inspector

may require either or both of the following in the case of a series of surface disturbances of five contiguous acres or less by the same owner or operator if the series of surface disturbances in aggregate constitute more than five acres:

1. A reclamation plan under article 3 or 4 of this chapter.
2. A financial assurance mechanism under article 5 of this chapter.

27-924. Inactive mining units

A. At an inactive mining unit, the following are not subject to the requirements of this chapter:

1. Voluntary reclamation measures that are not required by federal or state law, regulation or permit.
2. Actions that are required to comply with other local, state or federal laws, regulations, permits, orders or decrees.
3. Maintenance activities.

B. Exploration operations and mineral development, mining, concentrating and leaching activities at an inactive mining unit are subject to the requirements of this chapter only with respect to new surface disturbances created by those operations and activities.

27-925. Remedial response to emergencies and governmental orders

A. An owner or operator is not required to provide notice or obtain approval of a reclamation plan or financial assurance mechanism under this chapter before creating a new surface disturbance pursuant to a remedial action in response to an emergency or to a government order to prevent or mitigate an actual or potential release of pollutants into the environment.

B. The owner or operator shall update the reclamation plan and financial assurance mechanism within six months after completing the emergency or remedial measure.

27-926. Initiation, extension and completion of reclamation

A. Beginning April 1, 1997, if a surface disturbance cannot be practicably reclaimed concurrently with an exploration operation or at a mining unit, reclamation shall be initiated:

1. Within two years after completing the exploration operation or mining unit.
2. Within two years after cessation of mining activities.
3. As required by applicable federal law.

B. The state mine inspector shall extend the period in which to initiate reclamation under subsection A, with up to three subsequent five year extensions, if the owner or operator of an exploration operation or mining unit demonstrates a reasonable likelihood that the project or operation will resume, based on a consideration of factors, including:

1. The presence of additional mineralization of the commodity being mined or other commodities in commerce.
2. Historical fluctuations in the value of the commodity being mined or other commodities present if they can be mined using the same disturbances.
3. The design life of any beneficiation process components existing at a mining unit.

C. Once initiated, the final reclamation measures shall be performed as stated in the approved reclamation plan unless the exploration operation or mining unit is reactivated.

27-927. Substantial changes to an approved reclamation plan; fee

A. The state mine inspector must approve any substantial change to an approved reclamation plan as provided by this section before the change is implemented.

B. The owner or operator of the exploration operation or mining unit shall submit a notice of a proposed change to the inspector describing the purpose and scope of the proposed change and whether it constitutes a substantial change to the

approved reclamation plan. If the inspector fails to respond within thirty days, the change is considered to be consistent with the operation's or unit's approved reclamation plan.

C. If the inspector determines that the change is substantial the inspector shall:

1. Notify the owner or operator of the decision within fifteen days after receiving the notice.
2. Require the owner or operator to submit an amendment to the plan for approval. The inspector shall approve or disapprove the amended plan within ninety days after receiving the amended plan.

D. The following changes are not considered to be substantial, and the owner or operator is required to file only an amendment to the reclamation plan and modify the financial assurance as necessary:

1. New surface disturbances that can be reclaimed in a manner that is substantially similar to the manner of reclamation included in the approved plan.
2. Changes in the specific techniques for reclamation, including the equipment used and the mixes of seeds and soils.
3. Changes in location, configuration or acreage of surface disturbances unless the changes substantially affect the reclamation measures stated in the reclamation plan.

E. Before implementing a substantial change in an approved reclamation plan, the owner or operator shall submit to the inspector, and receive the inspector's approval for, a revised financial assurance mechanism to account for the substantial change.

F. If a surface disturbance is created on more than fifty acres of land that are not included in an initial reclamation plan, the owner or operator shall submit to the inspector a fee of not more than three dollars for each new acre of surface disturbance. This fee shall be submitted with either notice of proposed change required in subsection B or with a plan

amendment submitted pursuant to subsection D.

27-928. Transferring an approved reclamation plan

A. A reclamation plan may be transferred from one person to another, by operation of law or otherwise, if the current owner or operator notifies the state mine inspector in writing before the transfer. The notice shall include:

1. The name, address, telephone number and statutory agent of the person to whom the plan will be transferred.
2. The effective date of the proposed transfer.
3. A proposed financial assurance mechanism.
4. Other information the inspector may determine to be necessary by rule.

B. The inspector may deny a transfer on determining that the proposed financial assurance mechanism does not comply with article 5 of this chapter or that the transferee is not capable of operating in compliance with this article, the rules adopted pursuant to this article or the conditions established in the plan. The inspector shall issue notice of and the reasons for the denial within fifteen days after receiving the proposed transfer. A denial of the plan transfer is subject to judicial review pursuant to title 12, chapter 7, article 6.

C. On receiving the approved financial assurance mechanism from the transferee the inspector shall release the financial assurance mechanism provided by the transferor.

27-929. Notice of plan or substantial change

A. The state mine inspector shall give notice of a proposed reclamation plan or a substantial change to an approved reclamation plan once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which the exploration operation or mining unit is or will be located. If there is no such newspaper, the inspector shall give notice in a newspaper of general circulation that is published in

an adjoining county.

B. The notice shall briefly describe the proposed reclamation plan or substantial change and state that any person who may be adversely affected by the plan or substantial change may:

1. File a written objection to the plan or substantial change within fifteen days after the last publication.
2. Request a public hearing.

C. An objection shall state the name and mailing address of the objector, be signed by the objector or the objector's agent or attorney and clearly state the reasons why the plan or substantial change should be denied. Grounds for objection are limited to whether the proposed plan or substantial change meets the criteria for approval in this chapter.

D. If there is sufficient public interest by persons who may be adversely affected by the plan or substantial change, the inspector may hold a public hearing in the county in which the exploration operation or mining unit is or will be located.

27-930. Public disclosure of information; definition

A. The state mine inspector shall make available to the public any records, reports or information obtained or prepared by the inspector, unless a notice accompanying the information or any part of the information states that the information is a trade secret or is otherwise confidential to the party's competitive position.

B. If the inspector, on his own or following a request for disclosure, disagrees with the trade secret or confidential notice, the inspector may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the party shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The inspector may not disclose the confidential information until a court order

authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

C. The inspector shall make available to the public the following information obtained from any person pursuant to this chapter:

1. The name and address of any plan applicant.
2. The proposed post-mining land use or uses.
3. A general description of the proposed reclamation measures.

D. The inspector may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the inspector or the employees of the division of mined land reclamation to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.
2. Employees of the United States environmental protection agency if the records, reports or information is necessary or required to administer and implement or comply with federal statutes or regulations.

E. For purposes of this section, “trade secret” means information to which all of the following apply:

1. A person has taken reasonable measures to protect the information from disclosure and the person intends to continue to take those measures.
2. The information is not and has not been reasonably obtainable by legitimate means by other persons without the person’s consent, other than by governmental entities and other than in discovery based on a showing of special need in a judicial or quasi-judicial proceeding.
3. A statute does not specifically require disclosure of the information to the public.
4. The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm

to the person's competitive position.

27-931. Variances

A. The state mine inspector may grant to an owner or operator of an exploration operation or mining unit a conditional order allowing the person to vary from any rule adopted pursuant to this chapter or any requirement or condition of a reclamation plan issued pursuant to this chapter if the inspector finds that issuing the conditional order will not endanger public safety and will not be inconsistent with the criteria established in section 27-973.

B. The inspector may approve innovative reclamation or other measures proposed by the owner or operator that vary from the reclamation standards of this chapter, the financial assurance requirements under article 5 of this chapter or the rules adopted pursuant to this chapter after a public hearing and on a showing that the innovative or other measures can be reasonably expected to achieve the post-mining land use objectives stated in the reclamation plan.

27-932. Coordination with other governmental agencies

A. The state mine inspector shall coordinate the review and approval of reclamation plans with the state land department, the United States bureau of land management, the United States forest service and other agencies that manage public lands on which exploration operations or mining facilities are located, within the respective jurisdictions, through memoranda of agreement or cooperative agreements that designate a lead agency for reclamation plan review and action. This coordination is intended to avoid duplication of efforts to inspect exploration operations and mining facilities and review and enforce reclamation plans. The memoranda of agreement shall also provide that no financial assurance may be required under this article that will duplicate financial assurance required under any other law or agreement.

B. If an exploration operation or mining unit is located on land

administered by a federal agency, an approved federal reclamation plan and a financial assurance mechanism for the federal land that are consistent with the requirements of this chapter supersede the requirements for a reclamation plan and financial assurance mechanism otherwise required by this chapter.

27-933. Denials; appeals

The owner or operator of an exploration operation or mining unit may appeal the state mine inspector's denial of a plan as provided by title 12, chapter 7, article 6.

27-934. Plan submission fee; accounting and appropriation of revenues

A. The state mine inspector shall assess and collect a one-time submission fee from the owner or operator of each exploration operation and mining unit at the time the owner or operator submits a plan under article 3 or 4 of this chapter.

B. For fiscal year 1996-1997 the submission fee is three dollars per acre of surface disturbance covered by the plan. Thereafter, the inspector may revise the amount of the submission fee each year based on the reasonable direct costs to process, review and approve or deny the plan, but the submission fee shall not exceed three dollars per acre of surface disturbance covered by the plan.

C. The inspector shall transmit the revenues from the submission fee to the state treasurer for deposit in the state general fund. The inspector shall submit the amount that is necessary to administer and enforce this chapter as a separate item in the inspector's budget request. The legislature's appropriation to the inspector shall include an amount sufficient to administer and enforce this chapter, including payments to consultants for services provided pursuant to section 27-935.

27-935. Plan review and evaluation by private consultants; reporting expenditures

A. Subject to section 38-503 and other applicable statutes and rules, the state mine inspector may contract with a private consultant for the purpose of assisting the inspector in reviewing reclamation plans that are submitted under this chapter to determine whether the plans meet the criteria and requirements of this chapter and the rules adopted by the inspector.

B. The inspector shall pay the consultant for the services rendered from the inspector's appropriation under section 27-934. The inspector shall report to the staff director of the joint legislative budget committee:

1. Expenditures of money for the purposes of this section.
2. The name and address of each consultant.
3. The plan submittals that cause the expenditure of the monies.

Article 3. Exploration Operations Reclamation Plan

27-951. Submission and contents of reclamation plan

A. Beginning April 1, 1997, a person who conducts exploration operations that will create more than five contiguous acres of surface disturbance shall submit a reclamation plan to the state mine inspector. The reclamation plan shall:

1. Identify the county or counties in which exploration operation will be conducted.
2. State the reclamation measures that will be taken to reclaim access roads, drill pads, drill holes, trenches and other exploration workings where the operator conducts exploration operations in this state.

B. An operator may submit a single reclamation plan covering all new and existing exploration operations in this state.

27-952. Notice of complete, incomplete or denied plan

A. The state mine inspector shall notify the operator that a reclamation plan is administratively complete or incomplete within thirty days after receiving the plan.

B. If the inspector notifies the operator that a plan is incomplete or denied, the inspector shall include a written explanation stating the reasons for denial including recommendations for correcting incomplete or unacceptable parts of the plan consistent with the requirements of this chapter.

27-953. Approval; criteria

The state mine inspector shall approve a reclamation plan for exploration operations within sixty days after receiving a complete plan if the plan provides for the reclamation of surface disturbances at the exploration operations according to the following requirements, as applicable:

1. Exploration access roads that the operator constructs and that will not be part of a post-exploration use shall be reclaimed in a timely manner after the exploration is completed. If a governmental unit or agency will accept dedication or conveyance of an access road, reclamation is not required.

Reclamation shall include removing culverts, restoring drainage to its general predisturbance configuration, ripping the road surface to reduce compaction and aid revegetation and controlling access of motorized vehicles to the reclaimed area.

2. Holes that are drilled for mineral exploration purposes, unless completed for water monitoring, withdrawal or other use, shall be plugged, sealed or capped promptly after their use is completed as prescribed by rule by the department of water resources and as necessary to ensure the safety of persons, domestic animals, livestock and machinery in the area.

3. Drill pads shall be reshaped promptly after completion of drilling to prevent erosion and to

establish contours that are generally compatible with the adjacent areas or shall be ripped to reduce compaction and aid revegetation and, if appropriate, seeded to minimize erosion.

4. Mud pits that are used for drilling fluids and produced waters shall be reclaimed after hazardous substances are removed and disposed of, if necessary, and after they are sufficiently dry by reshaping to contours that are generally compatible with the adjacent areas. If it is appropriate to the area, suitable growth media shall be spread and seeded over the pit area.

5. Exploration trenches and pits shall be backfilled and reclaimed as soon as practicable as prescribed in the reclamation plan. If the trench or pit will remain open, measures shall be taken to stabilize the sides to address erosion control and to restrict access. Trench and pit reclamation shall include backfilling, reshaping to contours generally compatible with the adjacent areas and, if appropriate for the area, seeding to reestablish vegetation.

6. Areas that have been cleared by balding with mechanized equipment during exploration operations shall be reshaped after exploration is completed, unless used for post-exploration use, to be generally compatible with the adjacent area. Compacted areas shall be ripped to aid revegetation.

27-954. Beginning new exploration operations

New exploration operations may begin when both of the following occur:

1. The state mine inspector approves the reclamation plan for the exploration operations or ninety days after the inspector receives a reclamation plan if the inspector fails to notify the owner or operator that the plan submitted is incomplete or denied.
2. Financial assurance has been submitted to the inspector as required by article 5 of this chapter.

27-955. Annual renewal

A reclamation plan for exploration operations is renewable annually on:

1. Modification of the plan to address types of surface disturbances that will be conducted during exploration operations but that have been previously addressed in the reclamation plan.
2. Submission of any additional financial assurance, if necessary.

Article 4. Mining Unit Reclamation Plan

27-971. Submission and contents of reclamation plan

A. Beginning July 1, 1996, an owner or operator may submit a single reclamation plan that covers multiple mining units of a mining facility.

B. The proposed reclamation plan shall include:

1. The names and addresses of the owner or operator and an individual who will be the regulatory contact.
2. A statement that the owner or operator assumes responsibility for the reclamation of surface disturbances that are attributable to the mining unit consistent with the chapter and the rules adopted pursuant to this chapter.
3. The current ownership and use of the land included in the mining unit.
4. The proposed post-mining use of the land.
5. A description of the mining unit and the proposed surface disturbances that will be created.
6. The existing and proposed final topography, including the final slopes of leach piles, overburden or low grade rock stockpiles and tailing piles.
7. A narrative description of roads that are proposed for the mining unit.
8. The acreage affected by each type of surface

disturbance and a map of the mining unit area showing each surface disturbance. For previously undisturbed areas, the map shall identify any types of fish and wildlife habitats that will be disturbed.

9. The proposed reclamation measures that are necessary to achieve the post-mining land use including information concerning:

(a) The measures that will be taken to restrict public access to pits, adits, shafts and other surface features that may be a hazard to public safety.

(b) The measures that will be taken to address erosion control and stability.

(c) The measures that will be taken to address revegetation, conservation and the care and monitoring of revegetated areas as provided in this chapter.

(d) For surface disturbances where the proposed post-mining land use objective is designated as grazing, fish or wildlife habitat, forestry or recreation, the type of wildlife or fish habitat to be encouraged, including measures that will be taken to encourage that type of wildlife or fish habitat, and that those measures will not be incompatible with the fish or wildlife habitat on adjacent lands.

10. A proposed tentative schedule for beginning surface disturbances and beginning and completing the reclamation measures.

11. The estimated costs to perform each of the proposed reclamation measures for purposes of determining financial assurance requirements under article 5 of this chapter.

27-972. Notice of complete, incomplete or denied plan

A. The state mine inspector shall notify the owner or operator that the plan is complete or incomplete within thirty days after receiving the plan.

B. The inspector shall approve or disapprove a plan for new mining units within one hundred twenty days after receiving a complete plan.

C. If the inspector notifies the owner or operator that a plan is incomplete or denied, the inspector shall include a written explanation stating the reasons for denial including recommendations for correcting incomplete or unacceptable parts of the plan consistent with the requirements of this chapter.

27-973. Approval, criteria

A. The state mine inspector shall approve a reclamation plan for mining units if the plan provides for reclamation measures for surface disturbances that are:

1. Necessary to achieve a safe and stable condition suitable for the post-mining land use objectives stated in the reclamation plan.
2. Compatible with good engineering practices regarding erosion control and seismic activity for the applicable seismic zone.

B. In evaluating the reclamation plan, the inspector shall consider the technical and economic practicability of the proposed reclamation measures, taking into account the site-specific circumstances at the mining unit and the proposed post-mining land use objectives stated in the reclamation plan, including:

1. Grazing and other agricultural land use objectives.
2. Developed water resources and water management projects.
3. Fish or wildlife habitat.
4. Forestry.
5. Historic preservation.
6. Industrial or commercial, including tourism.
7. Recreation.
8. Residential.
9. Scientific or educational.
10. Mining or reining, except that the proposed post-mining use of mining or reining does not relieve an

owner or operator from complying with or implementing the reclamation plan requirements under this chapter.

11. Other appropriate post-mining land use objectives.

C. The post-mining land use objective stated in the reclamation plan need not be the same use of the land that existed before the mining facility was located on the site.

27-974. Preservation and conservation of soil; exceptions

Before creating a surface disturbance that is stated to be reclaimed by revegetation pursuant to a new mining unit reclamation plan, the owner or operator shall conserve the soil as reasonably available from the area of disturbance to support the stated revegetation on that specific disturbance as necessary to achieve the post-mining land use objectives stated in the reclamation plan unless the owner or operator demonstrates one or more of the following factors:

1. There is insufficient soil to make recovery practicable.
2. Recovery of the soil is not practicable due to limitations of topography, thickness of soil or other physical, climatic or biological constraints.
3. Direct revegetation of the disturbance, with or without soil amendments, is not reasonably expected to be successful.

27-975. Features excluded from reclamation plan or allowed to remain following reclamation; public protection measures

A. A reclamation plan may exclude any provision for reclaiming open pits, rock faces or subsidence areas through backfilling or returning material to the open pit, rock face or subsidence area from which it was extracted if it is impracticable and if public access to the open pit, rock face or subsidence area, including any surrounding unstable areas or walls, is restricted by fencing or other institutional controls.

B. The following factors shall be considered in determining

whether the reclamation of open pits, rock faces or subsidence areas is impracticable:

1. Cost to perform the reclamation.
2. Topography of the site.
3. Geology and stability of the site.
4. Time required to perform the reclamation.
5. Consumption of resources required to perform the reclamation.
6. Future access to mineral resources.

C. Buildings and other structures may remain after reclamation if adequate measures are taken to protect public safety.

27-976. Beginning new mining units

Beginning April 1, 1997, new mining units may begin when both of the following occur:

1. The state mine inspector approves the reclamation plan for the mining unit, or one hundred fifty days after the inspector receives a reclamation plan if the inspector does not notify the owner or operator that the plan submitted is incomplete or denied.
2. Financial assurance has been submitted to the inspector as required by article 5 of this chapter.

Article 5. Financial Assurance

27-991. Financial assurance requirements; form

A. Beginning April 1, 1997, as required by this chapter, owners and operators of exploration operations and mining units who create surface disturbances shall provide financial assurance mechanisms to the inspector as provided by this article.

B. Allowable financial assurance mechanisms for purposes of this article include any or a combination of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.

4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Cash deposit with state treasurer.
8. Evidence of ability to meet a corporate financial test or corporate guarantees as provided by 40 Code of Federal Regulations section 264.143(f).
9. Annuities.
10. Additional financial assurance mechanisms that are acceptable to the inspector.

27-992. Mining unit or existing exploration operation

A. The owner or operator of an existing exploration operation or a new or existing mining unit shall transmit a financial assurance mechanism to the state mine inspector within sixty days after a reclamation plan is approved. The inspector shall take final action on the financial assurance mechanism within thirty days after it is received.

B. In determining the amount of financial assurance to be provided for an existing exploration operation or a new or existing mining unit, the inspector shall consider the costs of approved reclamation measures stated in the reclamation plan. In computing reclamation costs, the inspector shall assume that third parties will perform the reclamation measures. The inspector shall reduce the amount of the required financial assurance to the costs of the owner or operator performing the reclamation measures if the owner or operator can demonstrate sufficient financial ability to perform the necessary reclamation. Financial ability shall be established by one or more of the financial assurance mechanisms described in 40 Code of Federal Regulations section 264.143(f).

C. Each financial assurance mechanism for an existing exploration operation or a new or existing mining unit approved by the inspector shall provide the amount in current dollars equal to the cost to:

1. Perform the approved reclamation measures stated in the reclamation plan on the area of

surface disturbance.

2. Provide continued care and monitoring of the areas stated in the reclamation plan for revegetation for no more than three growing seasons without additional supplemental irrigation or other man-induced inputs after performing the reclamation measures unless the supplemental inputs are part of the post-mining land use. Notwithstanding this paragraph, revegetation efforts that are necessary to achieve the post-mining land use objective are considered adequate and complete if the owner or operator has taken reasonable measures to achieve vegetative success. Technical and economic practicability as it relates to site-specific conditions and the proposed post-mining land use shall be taken into account in making that determination.

D. The inspector shall adjust the amount of financial assurance every five years or more often as necessary to adjust for new areas of planned surface disturbances or inflation or to reflect changed costs resulting from substantial modifications of the reclamation plan.

27-993. New exploration operation

A. Beginning April 1, 1997, the owner or operator of a new exploration operation shall furnish a financial assurance mechanism to the state mine inspector in an amount equivalent to two thousand dollars per acre of new surface disturbance, unless the inspector approves a cost estimate for an amount less than two thousand dollars per acre.

B. An owner or operator may provide a single financial assurance mechanism for all of its exploration operations conducted in this state.

27-994. Duplication of financial assurance not required

Financial assurance is not required under this article that duplicates financial assurance that is required under other state

or federal laws.

27-995. Incremental financial assurance

An owner or operator may provide financial assurance under this article on an incremental basis for planned surface disturbances described in the reclamation plan.

27-996. Release of financial assurance

A. An owner or operator may apply to the state mine inspector to release all or part of the financial assurance provided under this article. The application shall:

1. Describe the reclamation measures that have been performed.
2. Describe any surface disturbances included in the reclamation plan that have not been disturbed.
3. Contain an estimate of the costs of reclamation measures that have not been performed.

B. Within sixty days after receiving a complete application, the inspector shall release all or part of the financial assurance except for any amount that is necessary to perform the reclamation measures identified in the reclamation plan. After the reclamation measures have been performed, the remaining financial assurance shall be released, except that ten percent shall be retained for the costs of care, monitoring and one reseeding, if necessary, for areas that have been revegetated. The inspector shall release the retained monies after a period of not more than three growing seasons after the supplemental management or other man-induced inputs have been finally removed or as otherwise provided in section 27-992, subsection B.

27-997. Rules; release, forfeiture or exercise of financial assurance

A. The state mine inspector shall adopt rules for reviewing and acting on:

1. Applications to release all or part of the financial assurance under this article.

2. Forfeiture or exercise of the financial assurance on failure to implement a reclamation plan as required by this article.

B. The rules shall provide for written notice to all principals and sureties on the financial assurance and an opportunity for a hearing.

Article 6. Enforcement

27-1021. Inspections

Beginning April 1, 1997, the state mine inspector may enter and inspect, during normal business hours, any exploration operation or mining facility that is subject to this chapter to determine compliance with this chapter. The inspector shall give the owner or operator the opportunity to have its representative accompany the inspector. Within thirty days after the date of the inspection, the division of mined land reclamation shall provide to the owner or operator a copy of any inspection report produced as a result of any inspection of the exploration operation or mining facility.

27-1022. Compliance orders

A. Beginning April 1, 1997, if the state mine inspector determines that a person is violating this chapter, a rule adopted pursuant to this chapter or any condition of a reclamation plan approved pursuant to this chapter or is causing an imminent and substantial danger to the public safety, the inspector may issue an order requiring compliance either immediately or within a stated period of time.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

C. The inspector shall transmit the compliance order to the alleged violator either by certified mail, return receipt

requested, or by hand delivery.

D. At the inspector's request, the attorney general may file an action in superior court to enforce orders issued under this section after the order becomes final. The action shall be filed in superior court in the county in which the alleged violation occurred or which the inspector maintains an office.

27-1023. Enforcement action on reclamation plan approval

A. The state mine inspector may suspend, withdraw or revoke a reclamation plan approval if the inspector determines that the facility is in violation of any rule adopted pursuant to this chapter.

B. Any action taken under this section shall comply with the requirements of title 41, chapter 6.

27-1024. Injunctive relief; civil penalties

A. Beginning April 1, 1997, if the state mine inspector has reason to believe that a person is violating this chapter or a rule adopted pursuant to this chapter or that a person is causing an imminent and substantial danger to the public safety, the inspector, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public safety, without regard to whether the person has requested a hearing.

B. A person who violates this chapter or a rule, order or reclamation plan approval adopted or issued pursuant to this chapter is subject to a civil penalty of not more than one thousand dollars for each day of violation, not to exceed fifteen thousand dollars for each violation. At the inspector's request, the attorney general shall file an action in superior court to recover civil penalties as prescribed by this section.

C. An action filed under this section shall be brought in superior court in the county in which the alleged violation

occurred or in which the inspector maintains an office.

27-1025. Agency order; appeal

A. An order issued by the state mine inspector pursuant to this article is final unless the defendant appeals the order pursuant to title 41, chapter 6 within thirty days of receiving the order.

B. A final agency order is subject to judicial review pursuant to title 12, chapter 7, article 6.

27-1026. Violation; classification

A. Beginning July 1, 1996, an owner or operator of an exploration operation or mining unit shall not:

1. Cause a surface disturbance at an exploration operation or mining unit in violation of this chapter.
2. Fail to refuse to conduct reclamation according to the terms of a reclamation plan authorized by this chapter.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Mined Land Reclamation Rules

Title 11-Mining

Chapter 2. State Mine Inspector-Mined Land Reclamation

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Article 1. Definitions

R11-2-101. Definitions

In this Chapter and the Act, unless the context otherwise requires:

“Act” means the Arizona Mined Land Reclamation Act, enacted in 1994, Arizona Revised Statutes 27-901 et seq., as amended.

“Approved reclamation plan” means the owner’s or operator’s plan for reclaiming surface disturbances after approval by the State Mine Inspector.

“Backfill” means earth, overburden, mine development rock, or imported material used to replace material removed during mining.

“Commodities in commerce” means commodities that are mined for use or conversion into a salable or usable product.

“Completion” or “Completing” means the permanent discontinuance of mining activity of an exploration operation or mining unit without the intent to resume operation.

“Growth media” means substances or materials that promote or support vegetation.

“Inspection” means a visual review of an exploration operation or mining unit to assure compliance with the Act, this Chapter, or any condition of an approved reclamation plan.

“Institutional controls” means mechanisms that guide, manage, or exercise restraint or direction, including deed restrictions to protect public safety, fencing districts and physical control of access.

“Mining activity” means any activity directly involved in

mineral exploration, development or production at or on an exploration operation or mining unit.

“Operator” means any person who is legally responsible for directing mining activity at an exploration operation or mining unit.

“Owner” means any person who owns land with surface disturbances subject to the Act and this Chapter.

“Person” means an individual, corporation, governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

“Showing of good cause” means a demonstration by the owner or operator of a reason beyond the owner’s or operator’s control which prevents or limits the ability to act within required time limits or a demonstration by the owner or operator that the owner or operator is making good faith efforts toward the coordination and submittal of a reclamation plan.

“Subsidence” means the measurable lowering of a portion of the earth’s surface or substrata.

Article 2. General regulatory Provisions

R11-2-201. Document Submittals

- A. An owner or operator shall submit to the State Mine Inspector by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery the following:
1. Reclamation plans and amendments (1 original and 4 copies);
 2. Certificates of disclosure;
 3. Financial assurance mechanisms;
 4. Notices of transfer;
 5. Applications, petitions or requests for or objections

to substantial changes, variances, notices of proposed changes, amendments, releases of financial assurance mechanisms; or

6. Any other matter that may require action by the State Mine Inspector.

B. All submittals shall be dated and signed by the owner or operator or by a person who has legal authority to sign on behalf of the owner or operator. All submittals shall include the names and addresses of the owner and operator and any individuals who will be regulatory contacts.

R11-2-202. Preservation of Documents

An owner or operator shall retain a copy of the current approved reclamation plan, reclamation plans for areas for which reclamation has been completed and the most recent annual status report until all reclamation measures have been completed. These documents shall be available for examination by the inspector.

R11-2-203. Extension of Time for Submittal of Plan

The owner or operator may request one or more extensions of time for submittal of a reclamation plan for an existing exploration operation or an existing mining unit. If the State Mine Inspector grants an extension of time to submit a reclamation plan for an existing exploration operation or an existing mining unit, the extension shall not exceed 90 days. For each subsequent extension, the owner or operator shall submit a revised request which indicates any changes in the relevant factors for consideration shown in the previous request for an extension.

R11-2-204. Supersedure by Federal Plan

A. The owner or operator of an exploration operation or a mining unit which is located in part or in whole on land administered by a federal agency may submit to the State Mine Inspector a request for supersedure pursuant to A.R.S.

§27-932. Such a request shall include a copy of the federal reclamation plan and the financial assurance mechanism.

B. Within 30 days after receiving a request for supersedure, the State Mine Inspector shall determine in writing whether the federal reclamation plan and financial assurance mechanism are consistent with and shall supersede the requirements of the Act and this Chapter. If the State Mine Inspector denies the request to supersede, the State Mine Inspector shall provide an explanation of the reasons for denial in the written determination.

R11-2-205. Extension of Time for Initiation of Reclamation

A. The owner or operator of an exploration operation or mining unit shall submit a written request for an extension of time to begin reclamation under A.R.S. §27-926(B) at least 45 days before the time to begin reclamation under A.R.S. §27-926.

B. The State Mine Inspector shall evaluate and either approve or deny the request within 30 days. If the State Mine Inspector fails to act on the request within 30 days after receipt, the request shall be considered approved. If the State Mine Inspector denies the request for an extension, the State Mine Inspector shall state the reasons for denial in writing.

R11-2-206. Variance

A. In addition to information required by the Act or elsewhere in this Chapter, a request for variance submitted pursuant to A.R.S. §27-931(A) shall include:

1. Identification by owner or operator and mine name, if any, of the exploration operation or mining unit for which the variance is sought;
2. A descriptive location of the property on which the exploration operation or mining unit is located;
3. Identification of the Section of this Chapter or requirement or condition of the approved reclamation plan from which the variance is sought;
4. The justification for the variance; and
5. Alternative methods or measures to be

used.

B. Within 30 days after receiving a variance request pursuant to A.R.S. §27-931(A), the State Mine Inspector shall grant a conditional order authorizing the variance or deny the request in writing. The State Mine Inspector shall state the reasons for the determination.

R11-2-207. Cessation of Mining Activity

A. The cessation of mining will be considered to have occurred if any of the following occur:

1. The person conducting the mining activity has gone out of business and there is no succeeding legal entity;
2. No mining activity has taken place within 1 year from the date the most recent annual status report was filed with the State Mine Inspector and no staffed office remains on the site;
3. The extension of time to begin reclamation requested by the owner or operator and approved by the State Mine Inspector under R11-2-205 has expired and no other extension has been granted; or
4. The State Mine Inspector has made a written determination that the mine has been temporarily or permanently abandoned.

Article 3. Exploration Operation Reclamation Plan

R11-2-302. Exploration Operation Reclamation Plan Content

A. In addition to the content requirements found in A.R.S. § 27-951 (A), the reclamation plan shall also include a sketch of the layout of the exploration project, showing the locations, nature, and acreage of each disturbance. The owner or operator shall not be required to include specific survey coordinates identifying exact topographic features or exact geographic locations.

B. For existing exploration operations, the owner or operator shall include the estimated costs to perform the reclamation measures to determine financial assurance requirements under Article 5 of the Act and Article 8 of this Chapter.

R11-2-302. Annual Renewal

A. Every owner or operator with an approved reclamation plan shall annually, within 60 days after the anniversary date of the approved reclamation plan, submit to the State Mine Inspector a request for annual renewal pursuant to A.R.S. § 27-955. The request shall:

1. Provide the status of the exploration operation reclamation;
2. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed; and
3. Include any modifications to the approved reclamation plan.

B. The State Mine Inspector shall renew the approved reclamation plan, including modifications, if the renewal includes modifications that are consistent with the criteria of the Act and this Chapter and if additional financial assurance required by the Act has been submitted to the State Mine Inspector. If the renewal includes modifications to the approved plan that constitute a substantial change, the State Mine Inspector shall renew the approved reclamation plan under the procedures of A.R.S. § 27-927 and 27-929 or deny the proposed substantial change.

C. If the State Mine Inspector fails to provide the owner or operator with a written renewal determination within 60 days after receipt of the request for annual renewal, the approved reclamation, including modifications that do not constitute substantial changes, shall be deemed renewed.

Article 4. Exploration Operation Reclamation Standards

R11-2-401. Restricted Access

Under A.R.S. §27-953(5), access to those portions or places of open pits or trenches in places frequented by the public shall be restricted by measures including fencing and the posting of visible warning signs.

R11-2-402. Trash Removal

The owner or operator shall remove trash and other materials and structures incidental to exploration that pose a threat to public safety, create a public nuisance, or are inconsistent with an approved reclamation plan.

Article 5. Mining Unit Reclamation Plan

R11-2-501. Mining Unit Reclamation Plan Content

A. In addition to the proposed reclamation measures that are necessary to achieve the post-mining land use found under A.R.S. §27-971(B)(9)(a) through 27-971(B)(9)(d), the reclamation plan shall include procedures to aid in the development of vegetation consistent with the proposed post-mining land use objective for surface disturbances where the post-mining land use objective is grazing, wildlife habitat, or forestry. The type, density, and diversity of vegetation proposed shall depend on what is technically and economically practicable given site-specific characteristics such as climate and the availability and quality of soil.

B. Maps of the existing or proposed surface disturbances submitted pursuant to A.R.S. §27-971(B)(8) for mining units shall indicate the following:

1. Existing and proposed post-mining and post-reclamation physical topography;

2. Natural features, including surface water;
3. Surface disturbances, pits, excavations, and building sites;
4. Development rock piles, tailings dams and impoundments, heaps for leaching, spoil, soil, or growth media storage piles, overburden stockpiles, and other piles of unconsolidated material;
5. Solution ponds, settling ponds, and non-tailings impoundments;
6. Roads, buildings, structures, and stationary equipment;
7. Final post-mining land use objectives for each portion of the surface disturbance; and
8. Boundaries of the mining unit.

R11-2-502. Life of Approved Reclamation Plan

An approved reclamation plan, along with any approved substantial changes, shall remain in effect until reclamation is complete and all financial assurance is released.

R11-2-503. Multiple Post-Mining Land Uses

An owner or operator may list multiple post-mining land uses for a mining unit if the reclamation plan shows the post-mining land use for each area and each use satisfies the requirements of the Act and this Chapter.

R11-2-504. Annual Status Report

A. An owner or operator with an approved reclamation plan shall submit an annual status report for the preceding year to the State Mine Inspector within 60 days after the anniversary date of the reclamation plan approval. The status report shall:

1. Provide the status of the mining unit;
2. Include a map, an aerial photograph, or both, identifying the location of the surface disturbance and reclaimed area and the year in which the surface disturbance and reclamation was completed. If there

have been no changes in the previous year, then neither new maps nor new aerial photographs are necessary, and the owner or operator shall state there have been no changes in the annual status report; and 3. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed.

Article 6. Mining Unit Reclamation Standards

R11-2-601. Public Safety Standards

A. Reclamation activities at mining units shall be designed to reduce hazards to public safety to the extent technically and economically practicable by measures, including:

1. Removal of scrap metal, wood, trash, and other debris that pose a threat to public safety, or create a public nuisance, or are inconsistent with an approved reclamation plan; and
2. Regrading slopes as prescribed under R11-2-602.

B. The owner or operator shall maintain structures, equipment, and excavations at the reclamation site in a safe manner and shall restrict access to provide for public safety. Where hazards to public safety cannot be adequately reduced through reclamation measures; where buildings, structures, and excavations remain as part of the approved post-mining land use; or where a mining unit has been exempted from reclamation under A.R.S. §27-975 (A), any hazard to public safety shall be reduced by:

1. Constructing berms, fences, barriers, or any combination of these measures to restrict public access when technically and economically practicable; and
2. Posting visible warning signs in locations where public access is available.

R11-2-602. Erosion Control and Topographic Contouring

A. Mining units shall be reclaimed to a stable condition for erosion and seismic activity.

B. Grading and other topographic contouring methods shall be conducted, as necessary, to establish final land forms which are:

1. Suitable for the post-mining land use objective in the approved reclamation plan.
2. Stable under static and dynamic conditions as certified by a qualified engineer considering the following:
 - a. Site-specific seismic conditions;
 - b. Safety consistent with good engineering practices; and
 - c. The hazard to public safety, if failure occurs.

C. Site-specific grading, revegetation, or other proposed erosion-control measures shall be conducted, as necessary, to address erosion so that permanent piles of mine development rock, overburden, and tailings shall not restrict surface drainages in a manner that contributes to excessive erosion or which compromises the stability of the reclaimed facility.

R11-2-603. Roads

A. Reclamation of a road that is not included in the approved reclamation plan as part of the approved post-mining land use shall begin once that road is no longer needed for operations, reclamation, or monitoring.

B. The following reclamation measures shall be conducted, as necessary, to achieve the post-mining land use included in the approved reclamation plan:

1. Vehicular traffic shall be controlled on the reclamation area to achieve the reclamation objectives;
2. Surface drainage patterns shall be restored to pre-mining conditions or new patterns shall be established;

3. All bridges and culverts shall be removed or stabilized in place;
4. Bridges and culverts left in place shall be protected from erosion with rock, concrete, or riprap; and
5. Roadbeds shall be ripped, plowed, and scarified and revegetated, as necessary, to achieve the post-mining land use.

Article 7. Revegetation and Soil Standards

R11-2-701. Revegetation Provisions

A. If revegetation is part of the proposed reclamation plan, the plan shall describe the:

1. Season of revegetation;
2. Species and amounts per acre of seeds or flora; and
3. Planting methods.

B. If the proposed reclamation plan includes mulching, irrigation, pest control, disease control, or growth management measures, the proposed reclamation plan shall specifically describe the techniques, methods, controls, or measures to be used.

R11-2-702. Revegetation Standards

A. Where surface disturbances result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to reduce compaction and to establish a suitable root zone in preparation for planting.

B. Revegetation shall be conducted to establish plant species that will support the approved post-mining land use. The establishment of vegetation species, density, or diversity which is different than pre-existing conditions or on adjacent lands shall constitute successful reclamation if any of the following apply:

1. The post-mining land use is different than the

pre-mining land use or the use of the adjacent lands;
2. The site-specific nature of the surface disturbance, including soil conditions and topography, is such that the establishment of pre-existing or adjacent conditions is not technically or economically practicable; or
3. The establishment of different species is preferable for control of erosion.

C. Planting shall be conducted during the most favorable period of the year for plant establishment.

D. Soil stabilizing practices or irrigation measures, or both, may be used to establish vegetation.

E. This Section only applies if vegetation or revegetation measures are included in the approved reclamation plan.

R11-2-703. Soil Conservation

If soil conservation is required by A.R.S. §27-974, any stockpiles of conserved soil shall be marked with legible signs that identify the stockpile as "SOIL." A soil stockpile shall be stabilized, if necessary, to prevent excessive losses from erosion.

R11-2-704. Redistribution of Soil

Before redistribution of soil, the regraded land shall be treated, if necessary, to reduce the potential for slippage of the redistributed material or to enhance root penetration, or both. Soil and other materials shall be redistributed in a manner that prevents excess compaction and achieves a thickness consistent with the approved post-mining land use.

R11-2-705. Off-Site Soil

Soil may be brought in from an off-site location, and may include any growth media that will support vegetation, will provide a stable growing surface, and will not create a hazard t

to public safety.

Article 8. Financial Assurance

R11-2-801. Definitions

A. Unless expressly defined in the Act or this Chapter, the terms used in this Article have the same meanings as understood pursuant to generally accepted accounting principles and practices.

B. In addition to the definitions provided in A.R.S. §27-901, the following definitions apply to this Article:

“ICPA” means Independent Certified Public Accountant

“Parent corporation” means a corporation which directly owns at least 50% of the voting stock of the corporation which is the owner or operator. Any latter corporation is considered a “subsidiary” of the parent corporation.

“Substantial business relationship” means the extent of a business relationship which is necessary, under applicable state law, to make a guarantee contract (issued on the basis of that relationship) valid and enforceable. A “substantial business relationship” shall arise from a pattern of recent or ongoing business transactions, so that a currently existing business relationship between guarantor and the owner or operator is shown to the satisfaction of the State Mine Inspector.

R11-2-802. Amount of Financial Assurance

A. In estimating the cost of executing the reclamation plan, all activities in the reclamation plan shall be addressed, including, if applicable:

1. Earth moving, regrading, and stabilization of surface disturbances included in the reclamation plan;
2. Revegetation, preparation of seedbed, and planting;

3. Demolition of buildings and other structures;
4. For new exploration operations, removal of trash and other materials and structures incidental to exploration;
5. Any ongoing or long-term activities which are required to maintain the effectiveness of reclamation or are necessary in place of reclamation, including periodic clean-out of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to public safety;
6. Equipment mobilization and demobilization;
7. Contractor profit; and
8. Administrative overhead.

B. In addition to submitting the estimated costs to perform each of the proposed reclamation measures required under A.R.S. §27-971(B)(11) or R11-2-301(B), the owner or operator of a mining unit or existing exploration operation shall submit to the State Mine Inspector:

1. Documentation for the calculation of the estimated costs; and
2. The source of the estimated costs.

C. The State Mine Inspector shall review the owner's or operator's estimate of the cost for reclamation and determine if the estimate is adequate to complete all required reclamation.

D. If the State Mine Inspector determines the estimated cost of executing the reclamation plan is not adequate to complete all required reclamation, the reclamation plan shall be considered incomplete under A.R.S. §27-952 or 27-972.

E. If an owner or operator submits a written request for a reduction of financial assurance, along with a demonstration of sufficient financial ability pursuant to A.R.S. §27-992(B), the State Mine Inspector shall grant or deny the request in writing within 30 days after receiving the request.

R11-2-803. Blanket Financial Assurance

A. A single financial assurance mechanism covering 2 or more mining units or facilities may be provided by an owner or operator instead of separate financial assurances for each unit or facility. If an owner or operator provides a single financial assurance mechanism, it shall demonstrate the financial ability to fulfill the aggregate reclamation costs of the mining units or facilities covered by the single financial assurance mechanism.

B. If an additional unit or facility is to be covered under a single financial assurance mechanism previously provided to the State Mine Inspector, the owner or operator shall provide an updated financial assurance mechanism which demonstrates the financial ability to fulfill the aggregate reclamation costs of the mining units or facilities covered by the single financial assurance mechanism.

C. A single financial assurance mechanism covering 2 or more exploration operations may be provided by the owner or operator pursuant to A.R.S. § 27-993.

R11-2-804. Surety Bonds

An owner or operator may provide the State Mine Inspector with a surety bond as financial assurance for reclamation. The surety bond shall be an indemnity agreement in a sum certain payable to the State of Arizona, executed by the owner or operator as principal and shall be supported by the performance guarantee of a corporation licensed to do business as a surety in the State of Arizona.

R11-2-805. Certificates of Deposit

A. An owner or operator may provide the State Mine Inspector with a certificate of deposit which shows funds are available for reclamation of surface disturbances. The certificate of deposit shall name the State of Arizona as beneficiary. The financial institution issuing the certificate of deposit shall be a Federal Deposit Insurance Corporation-insured entity whose operations are regulated by a federal or state agency.

B. The owner or operator may redeem the certificate of deposit if alternative financial assurance that meets the requirements of the Act and this Chapter is substituted.

R11-2-806. Trust Funds

A. An owner or operator may satisfy the requirements of this Article by establishing a trust fund that meets the requirements of the Act and this Chapter. The trust fund shall name the State of Arizona as the primary beneficiary. The trustee shall be an entity which has the authority to act as trustee and whose trust operations are regulated and examined by a federal or state agency.

B. An owner or operator may satisfy the requirements of the trust fund by establishing a trust fund with a pay-in period that meets the requirements of the Act and this Chapter and by submitting an original signed duplicate of the trust agreement to the State Mine Inspector.

C. A copy of the trust agreement shall be placed in the facility's operating record.

D. The trust fund shall be initially funded an amount at least equal to the costs estimated in the approved reclamation plan for reclamation of existing surface disturbances covered by the Act and any surface disturbances to occur in the first year of the trust fund.

E. Payments into the trust fund, other than the initial funding, shall be made annually, at a minimum, with subsequent payments made not later than 30 days after each annual anniversary of the date of the first payment by the owner or operator. Annual payments shall be in an amount adequate to pay all costs of reclamation for land to be disturbed in that annual period.

F. If the property owner or operator establishes a trust fund after having used 1 or more alternate mechanisms specified in this Article, the initial payment into the trust fund shall be at

least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

R11-2-807. Letters of Credit

A. An owner or operator may satisfy the requirements of this Article by obtaining an irrevocable stand-by letter of credit. The letter of credit shall be effective to receive financial assurance approval. The issuing institution shall be an entity which has the authority to issue letters of credit, is federally insured, and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be irrevocable and issued for a period set to exceed 1 year by at least 90 days and in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation. The letter of credit shall provide that the expiration date will automatically renew as approved by the State Mine Inspector for a period of at least 1 year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the notice of cancellation.

C. The letter of credit shall indicate the conditions on which the State of Arizona may draw on the letter of credit.

D. The property owner or operator may, with notification to the State Mine Inspector, cancel the letter of credit if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted or if the owner or operator is released from the requirements of this Article under A.R.S. §27-996, R11-2-817, or R11-2-822.

R11-2-808. Insurance

A. An owner or operator may show financial assurance for reclamation by obtaining insurance that meets the requirements of this Section. At a minimum, the insurer shall be a non-captive insurance company licensed to transact the business of insurance by the Arizona Department of Insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Arizona..

B. The reclamation insurance policy shall guarantee funds will be available to reclaim all disturbed lands and be available when the operation fails to comply with the approved reclamation plan. The policy shall guarantee that, once reclamation begins, the insurer will be responsible for payment up to an amount equal to the face amount of the policy, under the direction of the State Mine Inspector to the party specified by the State Mine Inspector.

C. A policyholder may, with notification to the State Mine Inspector, receive partial payment for reclaimed areas. The insurance policy shall provide that requests for payment will be granted by the insurer only if the remaining value of the policy is adequate to cover the remaining costs of reclamation. The policyholder shall notify the State Mine Inspector that payment has been received.

D. The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for the failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurance policy shall provide that if there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the policyholder and to the State Mine Inspector 120 days in advance of the action. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if, before the date of expiration, the premium due is paid.

E. The insured may cancel the insurance policy, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

R11-2-809. Certificates of Self-Insurance

A. An owner or operator may use self-insurance in combination with a guarantee only if, to meet the requirement of the financial test under this Article, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

B. An owner or operator, and/or guarantor, may satisfy the requirements of this Article upon successful completion of the financial test specified in this Section. Successful completion is determined by meeting the criteria of R11-2-809(C) or R11-2-809(D) of this Section based on year-end financial statements for the latest completed fiscal year.

C. The criteria of this subsection for successful completion of the financial test are:

1. The owner or operator, and/or guarantor, shall have a tangible net worth of at least 10 times the costs estimated in the approved reclamation plan for reclamation.
2. The owner or operator, and/or guarantor, shall have a tangible net worth of at least \$10 million.
3. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer showing compliance with this section.
4. The owner or operator, and/or guarantor, shall either:
 - a. File financial statements annually with the U.S. Securities and Exchange Commission;
 - or
 - b. Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a

financial-strength rating of 4A or 5A.

5. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

D. The criteria of this subsection for successful completion of the financial test are:

1. The owner or operator, and/or guarantor, shall meet the financial test requirements of R11-2-811.

2. The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an Independent Certified Public Accountant (ICPA) and included with the ICPA's report of the examination.

3. The firm's year-end financial statements cannot include an adverse opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer demonstrating compliance with this section.

5. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the owner or operator, and/or guarantor, shall obtain a special report by an ICPA saying:

- a. The ICPA has compared the data (which the letter from the chief financial officer specifies) as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in the financial statements; and
- b. No matters caused the ICPA to believe the specified data should be adjusted.

E. If an owner or operator using the test to provide financial assurance finds the requirements of the financial test are no longer met, based on the year-end financial statements, the owner or operator shall obtain alternate financial assurance that

meets the requirements of the Act and this Chapter within 120 days after the end of the year for which financial statements have been prepared.

F. The State Mine Inspector may require reports of financial condition, at any time, from the owner or operator, and/or guarantor. If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of R11-2-809(C) or R11-2-809(D), the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.

G. After the initial submission of the items specified in R11-2-809(C) or R11-2-809(D), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in R11-2-809(C) or R11-2-809(D).

R11-2-810. Cash Deposits

A. An owner or operator may use a receipt of deposit with the State Treasurer for the estimated costs of reclamation. The receipt of deposit shall show funds are available for reclamation costs. The owner or operator shall complete a treasurer's financial warranty deposit under the State Mine Inspector's instructions. The deposit shall be in the name of the State of Arizona.

B. The owner or operator may cancel the deposit with the State Treasurer, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

R11-2-811. Corporate Financial Tests

An owner or operator may satisfy the requirements of this Section upon successful completion of a financial test specified

in R11-2-811(A) or R11-2-811(B). Successful completion is determined by meeting the criteria of subsection R11-2-811(C):

A. The owner or operator shall have:

1. 2 of the following 3 ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;
2. Net working capital and tangible net worth each at least 6 times the costs estimated in the approved reclamation plan for reclamation;
3. Tangible net worth of at least \$10 million; and
4. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the costs estimated in the approved reclamation plan for reclamation.

B. The owner or operator shall have all of the following:

1. A current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
2. Tangible net worth at least 6 times the sum of costs estimated in the approved reclamation plan for reclamation;
3. Tangible net worth of at least \$10 million; and
4. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the costs estimated in the approved reclamation plan for reclamation.

C. To show successful completion of the corporate financial test, the owner or operator shall submit the following to the State Mine Inspector:

1. A letter signed by the owner's or operator's chief financial officer demonstrating compliance with this section;
2. A copy of the ICPA's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

3. A special report from the owner's or operator's ICPA to the owner or operator saying:

- a. The ICPA has compared the data (which the letter from the chief financial officer specified) as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements; and
- b. No matters caused the ICPA to believe the specified data should be adjusted.

D. After the initial submission of items specified in R11-2-811(C), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in R11-2-811(C).

E. If the owner or operator no longer meets the requirements of R11-2-811(A) or R11-2-811(B), the owner or operator shall send notice of intent to establish alternative financial assurance to the State Mine Inspector. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternative financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the fiscal year.

F. The State Mine Inspector may, based on reasonable belief that the owner or operator may no longer meet the requirements of R11-2-811(A) or R11-2-811(B), require reports of financial condition by written request, at any time, from the owner or operator, in addition to those specified in R11-2-811(C). If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator no longer meets the requirements of R11-2-811(A) or R11-2-811(B), the owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.

G. The State Mine Inspector may disallow use of this test on the basis of qualifications in the opinion expressed by the ICPA in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The State Mine Inspector will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this disallowance.

H. The owner or operator is no longer required to submit the items specified in R11-2-811(C) when:

1. An owner or operator substitutes alternate financial assurance that meets the requirements of the Act and this Chapter; or
2. The State Mine Inspector releases the owner or operator's financial assurance under the Act and this Chapter.

I. An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a group of legal entities which are controlled through stock ownership by a common parent corporation, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections R11-2-811(A) through R11-2-811(I) of this section and shall comply with the terms of the guarantee. The certified copy of the guarantee shall accompany the items sent to the State Mine Inspector as specified in R11-2-811(C). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the

guarantee. The terms of the guarantee shall provide that:

1. If the owner or operator fails to perform the reclamation covered by the guarantee under the approved reclamation plan, the guarantor will do so or establish a trust fund as specified in the Act and this Chapter in the name of the owner or operator.

2. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector. Cancellation may not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Mine Inspector, as evidenced by the return receipts.

3. If the owner or operator fails to provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the owner or operator and the State Mine Inspector receive notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

R11-2-812. Annuities

A. An owner or operator may provide the State Mine Inspector an annuity as financial assurance for reclamation. The annuity shall name the State of Arizona as the beneficiary. The financial institution, if any, shall be licensed to do business in the State of Arizona. Any incremental or annual payment shall be in an amount adequate to pay all costs of reclamation for land disturbed in that incremental or annual period.

B. The owner or operator may cancel the annuity only if alternate financial assurance that meets the requirements of the Act and this Chapter is provided.

R11-2-813. Final Action on Financial Assurance Mechanism

The State Mine Inspector shall take final action on the financial assurance mechanism within 30 days after its receipt.

R11-2-814. Incremental Financial Assurance

If financial assurance is provided on an incremental basis as permitted under A.R.S. §27-995, the amount shall be equal to or greater than the estimated cost of reclamation for surface disturbances created during than increment.

R11-2-815. Financial Assurance Funding

Except where limited by statute or this Article, financial assurance provided by the owner or operator may be funded by the owner, the operator, by any third party, or by any combination of persons or entities.

R11-2-816. Limited Individual Financial Assurance for Single Unit

Whenever 2 or more persons or entities are named as owners or operators in a single exploration operation or mining unit, the owners or operators may limit the scope of their individual financial assurances so long as their financial assurances, in total, assure performance of all conditions and requirements of the Act, this Chapter, and the approved reclamation plan.

R11-2-817. Application for Release of Financial Assurance

A. The financial assurance shall not be released until all conditions and requirements of the Act and this Chapter have been satisfied.

B. Within 60 days after receiving a request for release of a financial assurance, the State Mine Inspector, or a designated agent, shall inspect the exploration operation or mining unit to determine whether the owner or operator has fulfilled the

requirements of the approved reclamation plan and either:

1. Approve release of the financial assurance or portion thereof; or
2. Notify the owner or operator in writing that the financial assurance or portion thereof will not be released, the reasons why, and the measures necessary to satisfy the requirements of the approved reclamation plan.

C. If a request to release is denied, the owner or operator may appeal the decision as provided by Title 12, Chapter 7, Article 6.

D. The 60 days within which the State Mine Inspector, or a designated agent, shall respond to a request to release a financial assurance may be extended by mutual agreement if conditions prevent an inspection of the reclaimed land.

E. The State Mine Inspector shall release the transferor's financial assurance mechanism upon receipt of alternate financial assurance that meets the requirements of the Act and this Chapter from the transferee.

R11-2-818. Forfeiture Criteria/Forfeiture of Financial Assurance

A. A financial assurance mechanism filed with the State Mine Inspector or state agency is subject to forfeiture if any of the following exist:

1. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter without initiating reclamation;
2. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter and the owner or operator stops or suspends any ongoing reclamation as determined by the State Mine Inspector;
3. The operator stops conducting business in the State

of Arizona and does not transfer the approved reclamation plan and financial assurance to a new operator under A.R.S. §27-928.

4. The operator stops conducting business due to insolvency, bankruptcy, receivership, or misconduct, under A.R.S. §27-905.

5. The operator fails to comply with the conditions of the financial assurance mechanism; or

6. The owner or operator fails to reclaim the surface disturbances under the approved reclamation plan, the Act, or this Chapter.

B. Where financial assurance has been filed with an agency of the federal government, the State Mine Inspector shall notify that agency and request forfeiture action to be taken.

R11-2-819. Notification of Forfeiture Action

At least 30 days before exercising forfeiture, the State Mine Inspector shall notify both the owner and operator and all principals and sureties by certified mail (return receipt requested), express mail (with a receipt), or hand delivery the financial assurance is subject to forfeiture and advise the owner or operator of the right to a hearing under A.R.S. Title 41, Chapter 6.

R11-2-820. Avoidance of Forfeiture

The State Mine Inspector shall advise both the owner and operator and all principals and sureties subject to R11-2-818 of the conditions under which forfeiture may be avoided. The conditions may include:

A. An agreement by the owner and operator or another party to perform reclamation operations under a compliance schedule, determined by the State Mine Inspector, which meets the conditions of the Act, this Chapter, and the approved reclamation plan.

B. A surety bond to complete the reclamation or a portion of the reclamation applicable to the financial assurance increment if the surety can show an ability to complete the reclamation under the Act, this Chapter, and the approved reclamation plan.

R11-2-821. Notice of Exercise of Forfeiture

The State Mine Inspector shall provide written notice by certified mail (return receipt requested) of any exercise of forfeiture of financial assurance to both the owner and operator and all principals and sureties.

R11-2-822. Full Release of Financial Assurance

The full release of financial assurance pursuant to A.R.S. §27-996(B), or as otherwise provided by the Act and this Chapter, shall be evidence the owner or operator has reclaimed as required by the Act, this Chapter, and the approved reclamation plan.

